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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,949	03/29/2007	Michael Rosenbauer	2003P01776WOUS	1548

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

WALDBAUM, SAMUEL A

ART UNIT	PAPER NUMBER
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1792

MAIL DATE	DELIVERY MODE
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10/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/583,949	Applicant(s) ROSENBAUER ET AL.	
	Examiner SAMUEL A. WALDBAUM	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. In the reply filed July 28, 2008 the applicant has amended claims 11-13 and 15-20, added claims 21-27. The previous rejection is hereby withdrawn in favor of the new rejection found below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11 and 13 rejected under 35 U.S.C. 102(b) as being anticipated by Oyler et al (U.S. ppub. 2003/0205954, hereafter '954).

3. Claim 11: '954 teaches a dishwasher with a container (fig. 1, part 104) with a control panel allowing the user to select multiple features and displaying that information to the user ([0025]) with a touch sensitive buttons for selecting user options ([0025]).

4. Claim 13: '954 teaches a plurality of touch sensitive buttons for user selection of desired feature ([0025]). Claims directed to apparatus must be distinguished from prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA). “[A]pparatus claims cover what a devices is not what a device does” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 12 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oyler et al (U.S. pgpub. 2003/0205954) as applied to claim 11 above further in view of Kavanaugh et al (U.S. pgpub 2001/0016886, hereafter '886).

'954 teaches all the elements of claim 11 above.

7. Claims 12 and 26: '954 teaches that the touch control panel can have a electrical scheme ([0025]). '886 is solving the same problem as the applicant of applying a touch controller to an electronic device. '886 teaches that a non-pressure sensitive touch sensitive device that relies on electromagnetic induction (hence a electromagnetic field) to determine the user function selections ([0088]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have use a touch controller as taught by '886 as the touch sensitive controller in apparatus '954 to have yield the

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predictable result of controlling the user selected functions as the user touches the controller.

Claims 14 and 17-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oyler et al (U.S. ppub. 2003/0205954) as applied to claim 11 above further in view of Brueggemann et al (U.S. 5,995,877, hereafter '877).

'954 teaches all the elements of claim 11 above.

8. Claim 14: '954 is not explicit on the detail design of the touch sensitive controller. '877 is a control panel for a dishwasher (col. 1, lines 5-15). '877 teaches that the touch sensitive surface is a flat surface (figs. 2a and 2b). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a flat touch sensitive portion as taught by '877 in apparatus '954 to have facility a flat surface for the user to touch to activate the selected function. '954 teaches that the control panel (part 166) is in substantially the same plane of the door in which is located (fig. 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to placed the control panel in the same plane of the surface it is located on, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

9. Claims 17 and 23: '877 teaches that a printed film (part 5, col. 3, lines 1-15) is used to indicate the functions of the buttons (col. 3, lines 1-15). '877 teaches that the film is located behind the touch surface (col. 3, lines 1-15) but also that the touch surface is transparent (col. 3, lines 1-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have placed the printed film on part of the

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surface to indicate the function on each button, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

`877 is silent as to what material the film is composed of. `877 further teaches that metal can have symbols printed on them for the functions of the buttons (col. 6, lines 20-30). The selection of something based on its known suitability for its intended use has been held to support a *prima facie* case of obviousness. *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). It would have been obvious to one ordinary skill in the art at the time the invention was made that the print film with function indicators of apparatus `954 in view of `877 can be made of a metallic material.

10. Claims 18, 19 and 24: `877 teaches that the control panel is controllably illuminated only by lights in steps (col. 3 line 1-col. 4 line 45).

11. Claims 20 and 25: `877 teaches that a number of LEDs of different colors are used to illuminate the surface of the panel (col. 4, lines 15-50).

Claims 15 and 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oyler et al (U.S. pgpub. 2003/0205954) as applied to claim 11 above further in view of Brueggemann et al (U.S. 5,995,877) and Neugass (U.S. 2,791,050, hereafter `050) as evidence by a definition of matt surface provided by www.dictionary.com.

`954 teaches all the elements of claim 11 above.

12. Claims 15 and 21: `954 is silent about the characteristics of the viewing surface of the control panel. `877 teaches that the viewing surface is transparent (col. 3, lines 1-67), allowing for signal indicators to be seen through the surface (col. 3, lines 1-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a transparent surface as taught by `877 as the touch surface in the

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control panel of apparatus '954 to have allowed signal indicators to be seen through the surface.

'954 in view of '877 does not teach that a matt material is used. Dictionary.com was used to determine the definition of "matt material" which is short for matte material which means lack of luster or gloss. '050 is a control panel. '050 teaches that a matte material finish is used in the control panel to diminish glare (col. 1, lines 15-25). It would have been obvious to one of ordinary skill in the art at the time invention was made to have finished the control panel surface with a matte material as taught by '050 in apparatus '954 in view of '877 to have cut down glare on the surface of the control panel.

Claims 16 and 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oyler et al (U.S. pgpub. 2003/0205954) as applied to claim 11 above further in view of Anderson et al (U.S. pgpub 2004/0109096, hereafter '096) and Neugass (U.S. 2,660,824, hereafter '824).

'954 teaches all the elements of claim 11 above.

13. Claims 16 and 22: '954 does not teach that transparent plastic film covers the touch sensitive surface. '096 is an overlay for a control panel. '096 teaches that a thin plastic films can overlay a control surface ([0032]) to reduces smudges on the control surface ([0032]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a thin plastic overlay as taught by '954 to cover the touch sensitive control surface of apparatus '954 to reduce smudging on the control surface.

'954 in view '096 does not teach that thin plastic films can be transparent. '824 is a control panel. '824 teaches that thin plastic films of plastic can be transparent to allow

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the transmission of light through the plastic (col. 3, lines 10-15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the plastic transparent as taught by '824 for the overlay of the control panel of apparatus '954 in view of '096 to have allowed the transmission of light through the plastic overlay.

Claims 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oyler et al (U.S. pgpub. 2003/0205954) in view of Kavanaugh et al (U.S. pgpub 2001/0016886) as applied to claim 16 above further in view Brueggemann et al (U.S. 5,995,877).

'954 and '886 teaches all the elements of claim 26 above.

14. Claim 27: See claim 18, 19, and 24 above.

Response to Arguments

15. Applicant's arguments filed July 28, 2008 have been fully considered but they are not persuasive.

16. Applicant is arguing that the prior art touch sensitive controller does not require a relatively light touch. First off the applicant never identifies or defines what a relatively light touch is, since relatively is a comparative term. Therefore a person touching the device is a relatively light touch when somebody touched with say a hammer.

17. Applicant further argues that the claim prior art does not teach that use of a electromagnetic field. First off this limitation is not in most of the claims, therefore this argument is moot with respect to those claims. For the claims that have this limitation, it is addressed in the above rejection.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMUEL A. WALDBAUM whose telephone number is (571)270-1860. The examiner can normally be reached on M-TR 6:20-3:50, F 6:30-10:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. A. W./

Examiner, Art Unit 1792

/FRANKIE L. STINSON/

Primary Examiner, Art Unit 1792